IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 26 of 2005

WITH

COMPANY PETITION No 27 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GLOFAME COTSPIN INDUSTRIES LIMITED

Versus

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Appearance:

1. COMPANY PETITION No. 26, 27 of 2005

MR SN SOPARKAR, SENIOR ADVOCATE FOR

NANAVATI & NANAVATI for Petitioner No. 1

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 15/04/2005

COMMON ORAL JUDGEMENT

These are the petitions filed by two petitioner Companies for sanction of a Scheme of amalgamation of Glofame Cotspin Industries Limited (the Transferor Company) with the Welspun India Limited (the Transferee Company) and their respective members and Creditors, under Section 391 read with Section 394 of the Companies Act, 1956.

2. The Transferor Company was incorporated and registered under the Companies Act, 1956 on 14.03.1992 under the name and style of J.M. Patel Sales Private Limited. Its name has undergone several changes and the present name of the Company was adopted from 15.01.2002. The Transferor Company is a public Limited Company and the Promoters are holding about 74.82% of the total issued subscribed and paid up equity share capital of the Company whilst Financial Institutions and the general public hold the remaining shares. The Transferee Company was incorporated and registered under the Act on 17.01.1985 in the State of Maharashtra under the name and style of Welspun Winilon Silk Mills Private Limited. Its name was changed to Welspun Polysters (India) Limited upon change in the status of Private Limited to a Public Limited Company and thereafter, its Registered office was shifted from the State of Maharashtra to State of Gujarat. The present name of the Company was adopted on 12.10.1995. The Promoters of the Company hold about 34% of the total issued, subscribed and paid up equity share capital of the Company whilst financial institutions and the general public hold the remaining shares.

3. The Transferor Company is a part of the Welspun group of Companies and about 55.60% of its yarn is consumed by the Transferee Company for weaving fabric. Considering the benefits of synergy, current industrial scenario and other benefits enumerated in the petition, it would be beneficial to have a composite unit for both spinning and weaving rather than have a stand alone spinning unit and a stand alone weaving unit, and therefore, it would be in the interest of the Transferor Company to amalgamate / merge with the Transferee Company as contemplated in the Scheme.

4. Company Petition No. 26 of 2005 was admitted on 11.02.2005 and it was observed therein that both the petitioners have sought the order of sanction from this Court to the Scheme of Compromise and arrangement between the Company and all its members and Creditors of the Company. Meetings of the Shareholders and Creditors of

the Company had been convened in pursuance of an order dated 31.01.2005 passed by this Court and the Chairman appointed for the said meetings has submitted his report which is at page 459 of this petition. The Chairman has reported that the compromise and/or arrangement was read out and explained to the persons attending the meetings and the same has been approved by the shareholders and the creditors. The petition was ordered to be advertised in "Indian Express" - English Daily - Baroda Edition and "Gujarat Mitra" - Gujarati Daily - Surat Edition along with "Western Times" (English and Gujarati) editions. Publication in the Official Gazette was dispensed with. Notice was issued to Central Government and the O.L. was permitted to engage a Chartered Accountant from his panel and obtain the necessary report from him at the cost of petitioner.

5. Similarly, Company petition No. 27 of 2005 was admitted on 11.02.2005 and it was observed therein that the meetings of the Shareholders and Creditors of the Company had been convened in pursuance of an order dated 31.01.2005 passed by this Court and the Chairman appointed for the said meetings has submitted his report which is at page 462 of the said petition. The Chairman has reported that the compromise and/or arrangement was read out and explained to the persons attending the meetings and the same has been approved by the shareholders and the creditors. The Court has thereafter passed the order regarding advertisement in the same manner as in case of Company Petition No. 26 of 2005.

6. Pursuant to the aforesaid orders, affidavit of publication was filed on 26.02.2005 along with which necessary newspaper cuttings were attached.

7. It has been submitted that no objection was received from any one. Even after publication of advertisement, no one has filed any objection before this Court to the said petitions.

8. In response to the notice to the O.L., he has submitted his report on 18.03.2005 wherein he has stated that the Auditors appointed for the purpose of scrutiny and investigation of the Books of Accounts and affairs of the Company have submitted their report and accordingly concluded that the affairs of the Company have not been conducted in a manner prejudicial to public interest. The Auditor has further stated that in view of their conclusion at para 14 (a) and (b) and also taking into consideration their observation made in para 6(2), they have stated that in their opinion, the affairs of the

Company have not been conducted in a manner prejudicial to the interest of its members or the public in general.

9. In para 6(2) of the report, the Auditor has observed that the depreciation on the fixed assets is calculated as per Schedule XIV to Companies Act, 1956 on straight line method. The income-tax assessment procedure for the year 2002 - 03 is in the process. There are no pending demand raised against the Company except the fact that the Central Excise Department has raised the demand of Rs. 1.74 Crores against the Company against which the Company has filed appeals before the Appellate (Tribunal). The Company has been granted tax exemption eligibility certificate by Industries Commissioner for adhoc amount of Rs.1506 Lacs under the incentive Scheme (1995). Against this, the Company has availed exemption under the above exemption certificate for Rs. 3344.97 Lacs on 31.01.2005 and the final exemption certificate is yet to be issued in favour of the Company for enhanced amount.

10. The auditor has further submitted that except the above mentioned demand, there are no pending demands with any other Central Government authorities. There are no cases filed against the Company. The Company has not materially defaulted and is adhering to the provisions of law as verified from the records of the Company and as informed by the Management. Tax audits are regularly carried out, returns of income tax are filed in time and the accounts have been filed with Registrar of Companies, Gujarat till the year ended on 31.03.2004. The Auditor has also observed that the Company does not have any subsidiary or it is not a subsidiary to any other Company. He has further submitted that Company has not provided for the contigent liabilities in respect of certain items under A to J which are mentioned in the said report.

11. Since no major objection is raised by the Auditor against the Scheme of amalgamation, the Auditor as well as O.L. both have stated that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members and public in general.

12. Pursuant to the notice issued by this Court to the Regional Director, Mr. Jitendra Malkan, the learned Asst. Solicitor General has filed his appearance and produced the Regional Director's Report dated 23.03.2005 on the record of this case. An affidavit is filed by Shri Devendra Krishna Patil, an authorised Signatory of both the Companies dealing with the objections raised by

the Regional Director. Mr. Malkan as well as Mr. Soparkar both are heard on the issues raised by the Regional Director. The Regional Director in his report has observed that the Registrar of Companies, Gujarat has specifically pointed out that by virtue of scheme of Arrangement between the above two companies which was sanctioned earlier by this Court on 20.03.2001 in Company Petition No. 37 of 2001 connected with Company Application No. 12 of 2001, "Spinning division" of Welspun India Limited (WIL) was transferred to M/s. Glofame Cotspin Industries Limited (GCIL). In the present petition, the status of the Companies is changed and reversed i.e. to say GCIL is now the transferor Company and WIL is referred as the transferee company and whatever assets and liabilities transferred to GCIL from WIL by order dated 20.03.2001, more or less same assets and liabilities will now be transferred back to WIL from GCIL through the present scheme of Amalgamation and GCIL is proposed to be dissolved without winding up.

13. So far as this objection is concerned, it is stated that there would not be any objection if the same assets have been transferred by the Transferor Company to the Transferee Company. As a matter of fact, the Regional Director has simply mentioned by way of the facts but while mentioning these facts, he has not raised any objection to that effect. By doing that, there is no breach of any statutory provision and ultimately Management of both the Companies have thought it fit to retransfer the said assets and they have acted accordingly by presenting the Scheme before this Court. Since the Scheme has been approved by the members and Creditors, there is no reason for withholding the sanction.

14. The second objection raised by the Regional Director is that the main issue raised by ROC, Gujarat is that although both companies have filed the copy of unstamped order dated 20.03.2001, copy of the duly stamped order of this Court dated 20.03.2001 has not yet been submitted to the ROC as the adjudication order passed by Collector of stamps is disputed by these companies. The order dated 20.03.2001 was given effect w.e.f. 25.04.2001 by both the companies without submitting copy of the duly stamped order u/s. 391 (3) r.w. Section 394 of the Act and also before certifying the same by the ROC. As the issue relates to the Govt. revenue and new scheme is filed before this Court when the earlier stamp matter is disputed and pending, the issue regarding pending adjudication and giving effect to the earlier order is required to be decided by this Court

on merits. Mr. Malkan has relied on the decision of the Hon'ble Supreme Court in the case of HINDUSTAN LEVER AND ANOTHER V/S. STATE OF MAHARASHTRA AND ANOTHER (2004) 1 COMPANY LAW JOURNAL 148.

15. So far as this objection is concerned, Mr. Soparkar has submitted that the petitioner Company has challenged the order of Collector of Stamps dated 26.11.2001 and adjudication of the appeal is pending. A copy of the appeal memo filed by the petitioners is attached along with the affidavit. The Transferee Company has undertaken to pay stamp duty as per the final adjudication in the said appeal subject to its further right of appeal. He has, therefore, submitted that the said objection has no bearing on sanctioning of the present scheme by this Court.

16. The third objection raised by the Regional Director is that in terms of order passed by this Court on 20.03.2001 in Company Petition No. 37 of 2001 at para 2A and 2B of the Scheme, the GCIL has issued preference shares. Consequent of that scheme and more or less those shares are being transferred back in same form to WIL in the present scheme for issue by WIL. Some of the Pref. Shares are already due for redemption by Transferor Company. In the opinion of ROC in view of the provisions of Sec. 80 of the Act, these Pref.. shares should be redeemed without issue by Transferee Company.

17. With regard to this objection, Mr. Soparkar has submitted that the Transferor Company has outstanding redemption preference shares to the tune of Rs.80 Lacs as on 06.04.2005. In view of the losses suffered by the Transferor Company and in view of pendency of the present proceedings, the Transferor Company has not been able to redeem the said shares. However, the Transferee Company undertakes to redeem all preference shares which have fallen due for redemption on or before 06.04.2005, within 30 days from the date of final order being passed in these petitions.

18. Mr. Soparkar has, therefore, submitted that having regard to these clarifications and undertakings, the Court should allow the present petitions and grant sanction to the Scheme, as the concerns raised by the Regional Director are satisfied.

19. After having heard learned advocate appearing for the petitioner and after having considered the report submitted by the O.L. based on C.A.'s report as well as the report of the Regional Director, the Court is of the

view that the objections raised by the Regional Director do not merit acceptance and that the Scheme of Amalgamation presented by the petitioners is not contrary to the public interest nor it is against the interest of the members of the Company. All objections raised by the Regional Director as well as O.L. have been duly explained and they would not in any way affect the scheme in question. The reliance placed by Mr. Malkan on the decision of the Hon'ble Supreme Court in the case of HINDUSTAN LEVER AND ANOTHER V/S. STATE OF MAHARASHTRA AND ANOTHER (2004) 1 COMPANY LAW JOURNAL 148 (Supra) is uncalled for as nobody claims for dispensation of filing of duly stamped certified copy of the order of this Court passed on 20.03.2001 in Company Petition No. 37 of 2001, nor anybody is claiming exemption from payment of requisite stamp duty. Effect was given subject to outcome of the adjudication of claim in appeal and in any case, the Transferee Company has undertaken to pay stamp duty as per the decision in appeal, subject to its further right to challenge the said order. By virtue of the present Scheme, the liability which may arise as a result of decision in appeal will not be affected in any manner and even if the Transferor Company may be dissolved without winding up, the authority can certainly recover the outstanding stamp duty from the Transferee Company. The Court, therefore, grants its sanction to the Scheme of arrangement between Glofame Cotspin Industries Limited with Welspun India Limited. The Scheme is, therefore, approved and the prayers made in para 32 (1) of the petitions are hereby granted.

20. The petitioners are directed to pay a sum of Rs.3,500/- each being the costs to Mr. Jitendra Malkan, the learned Asst. Solicitor General appearing for the Central Government.

21. Both these petitions are accordingly disposed of.

Sd/-

[K.A. PUJ, J.]

#Savariya#

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